

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROGER CAL JOHNSON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 4:08cv114-DPJ-JCS

WARDEN DALE CASKEY, et al.

DEFENDANTS

ORDER REVOKING *IN FORMA PAUPERIS* STATUS
AND REQUIRING PLAINTIFF TO PAY THE FILING FEE

This cause is before the court on Defendants' motion to dismiss, or alternatively, for issuance of a "three strikes" order and revocation of Plaintiff's *in forma pauperis status*. Having considered the motion, the court concludes that the motion should be granted.

On January 27, 2009, Plaintiff was granted *in forma pauperis* status in this action. Since that time, however, Plaintiff has had a third civil action or appeal dismissed under 28 U.S.C. § 1915 as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Therefore, the court concludes that Plaintiff's *in forma pauperis* application in this civil action should be revoked pursuant to 28 U.S.C. § 1915(g).

The Prison Litigation Reform Act provides, among other things, that a prisoner's privilege to proceed *in forma pauperis* is revoked if he has, on three prior occasions during detention, had an action or appeal dismissed as frivolous, malicious, or for failing to state a claim. 28 U.S.C. § 1915(g). Plaintiff Johnson has, on not less than three occasions, brought an action or appeal in a court of the United States that was dismissed

pursuant to § 1915(g).¹ Section 1915(g) does contains an exception to the "three-strikes provision." This exception allows prisoners to proceed i.f.p. in cases where he is under imminent danger of serious physical injury. However, having considered the allegations of the complaint, this court finds that Plaintiff has three-strikes and does not meet the exception to proceed i.f.p. Therefore, revocation of Plaintiff's i.f.p. privilege is appropriate.

IT IS THEREFORE ORDERED AND ADJUDGED, that Plaintiff's status as a pauper is hereby **revoked** for the reasons set forth above.

IT IS FURTHER ORDERED AND ADJUDGED, that Plaintiff is granted 30 days from the date of this order in which to pay to the Clerk of Court the requisite filing fee of \$350.00. If the filing fee is paid by Plaintiff or someone other than Plaintiff, there must be a written explanation that the money is being submitted as payment of the filing fee in this case (4:08cv114-DPJ-JCS) on behalf of plaintiff, Roger Cal Johnson. The filing fee of \$350.00 in this civil action may be payable to the Clerk of Court, and mailed to the Clerk, P.O. Box 23552, Jackson, Mississippi 39225-3552.

Failure to pay the filing fee as required by this order may result in the dismissal of this case for want of prosecution.

So ordered, this the 23rd day of November, 2009.

/s/ James C. Sumner
United States Magistrate Judge

¹Plaintiff accumulated his third strike by order of the Fifth Circuit Court of Appeals on July 2, 2009 in *Roger Johnson v. Roger Lewis, Captain*, cause no. 08-60646. The court specifically noted in its opinion the bar of § 1915(g) was being imposed.